

LAW OFFICES OF
MARTIN L. SCHMUKLER, P.C.
FORTY-ONE MADISON AVENUE
SUITE 5B
NEW YORK, NEW YORK 10010-2202

(212) 213-9400
FAX: (212) 684-0620
E-MAIL: martins@mlspclaw.com

Sept. 23, 2008

By ECF
Original to Court by Hand

Honorable Denise L. Cote
United States District Judge
Southern District of New York
500 Pearl Street, Room 1040
New York, NY 10007

Re: USA v. Nelson Arias Valencia
05-CR-1262 (DLC)

SENTENCING MEMORANDUM FILED ON BEHALF OF
OF DEFENDANT NELSON ARIAS VALENCIA

Dear Judge Cote:

This Sentencing Memorandum is respectfully submitted on behalf of defendant Nelson Arias Valencia who is scheduled to be sentenced on Friday, October 3, 2008.

In accordance with § C. of the Plea Agreement I ask the Court to impose a sentence outside of the applicable guidelines range and no greater than necessary to achieve the objectives of 18 U.S.C. § 3553, and which would take into account the recent emotional breakdown the defendant suffered and the guarded prognosis of Dr. Shawn E. Channell, Ph. D., who warned of a relapse. I am seeking a sentence comparable to the defendant Hector Espinel who received 70

months and I submit whose participation most closely parallels that of Mr. Arias.. It was Mr. Espinel who accompanied Mr. Arias to Bogota to a government agency known as ETAPAS in order to apply for a permit to operate his casino. By happenstance (to the best of our knowledge) co-defendant Molina was present at the same offices and Espinel introduced him to Mr. Arias. Espinel had been a member of the National police and served under Molina's command. In the ensuing discussion Molina made it known to Espinel and Arias that he was capable of furnishing protected assistance for the clandestine movement of large quantities of cocaine and hoped to align himself with drug traffickers. Those and other participants were arrested in what later turned out to be an undercover police operation.

The offense conduct section of the PSR sets forth the background, the means and methods of the conspiracy and the details of the role that each co-defendant played in the overall conspiracy. In Paragraph 27. C of the PSR of Nelson Arias Valencia, was described as a member of the Autodefensas Unidas de Colombia, a designated terrorist organization, and a narco-trafficker based in Medellin, Colombia who was the source of supply for the October 2005 and April 2006 shipments. The government agreed that this paragraph should be stricken from the PSR as there is no evidence to support it.

Mr. Arias spent more than a year in Combita, a prison in Northern Colombia not known for its comfortable lodgings. Not long after his arrival in the U.S., Mr. Arias came to realize that contrary to what he had been led to believe he faced severe punishment. I agreed to assume his representation and within two weeks he had satisfactorily participated in a safety-valve proffer with AUSA Marc Berger and several agents where Mr. Arias disclosed that he

introduced Molina to a potential supplier of cocaine. Within a short period of time after the proffer and Mr. Arias' plea allocation, he suffered a mental breakdown.

It is respectfully requested that this Court take into consideration the above submission and his mental health in calculating his sentence and assign credit for his time served in Colombia since his arrest in 2006.

Respectfully submitted,

/S/

Martin L. Schmukler

Counsel for Defendant
NELSON ARIAS VALENCIA

cc: Marc Peter Berger, AUSA by ECF
Sarah Anderson, U.S. Probation by Mail

CERTIFICATE OF SERVICE

I, Martin L. Schmukler, affirm under penalty of perjury that:

1. I am the attorney for defendant Nelson Arias Valencia.
2. On September 23, 2008, I cause a copy of the within Sentencing Memorandum to be served electronically on the Court and United States Attorney Marc P. Berger, by causing a copy of the same to be served and filed via the Clerk's Notice of Electronic Filing system.

Dated: Sept. 23, 2008
New York, New York

____/s/_____
Martin L. Schmukler
41 Madison Avenue, 5B
New York, NY 10010

Counsel for Defendant